the rent of premises. Clearly it cannot apply to any subject of a tenancy agreement that does not fall within its own definition of premises. And by that definition "premises" means (not "includes") a building and so forth and any part of such building "let or sublet separately". In the ordinary usage of the English language that clearly means let separately from any other building and does not mean let as a part of a number of buildings let together under a single contract of letting. The word "separately" governs the words "let or sublet"; it is the letting and not the building that must be separate. No doubt such a number of buildings within the scope of a single contract of letting would themselves be "premises" within the meaning of the Ordinance but they would be different premises from each one of them let separately.

On the view of the evidence adopted by the trial judge, which I think must be accepted by us, No: 937 Serangoon Road was first let separately when Mansoor became the tenant of it separately from the other buildings on Lot 324 in 1948 and the rent which was then agreed at $175 a month is accordingly the standard rent for the purposes of the Ordinance. In this result I can see nothing that conflicts with the objects of the Ordinance. The rent conciliation board had ample powers to vary that rent which would then have ceased to be the recoverable rent. But those powers were at no time invoked by the present appellant or the tenant before him.

An argument has been addressed to us, based on the case of *Capital and Provincial Property Trust, Ltd.* v. *Rice,*[5] that the standard rent in a case of this nature should be determined by some sort of process of apportionment of the original inclusive rent. To my mind that case is not very much in point by reason of the differences between our legislation and the United Kingdom Acts prior to 1957. The United Kingdom Acts controlled the rent of all dwelling houses to which they applied by providing that in every case rent should not be recoverable in excess of what was called the "standard rent". There were elaborate provisions which varied from time to time and which included a power of apportionment where a dwelling house was divided (see section 5 of the 1938 Act) and the effect of these was that a standard rent could be ascertained in respect of any dwelling house to which the Acts applied. And, of course, if this had not been the case the result would have been that in many cases the object of the Acts would have been frustrated for all control was by reference to the standard rent. In Singapore, however, there can be no question of the statute being frustrated if a standard rent cannot be ascertained in respect of any particular premises for in every case the rent conciliation board has power to fix the rent.

In any event in Singapore the court has no power of apportionment as between a landlord and his tenants.

The only provisions of the Ordinance relating to apportionment of rent are contained in sections 22 and 23. These sections, which were introduced into the local legislation for the first time in 1953, provide (section 22) that when the tenant of premises has sublet any part of such premises the board may apportion the rent as between the tenant and the sub-tenant, and (section 23) where there has been no such apportionment by the board the court may make such an apportionment in any proceedings for the recovery of the premises or any part of them. This is subject to the proviso that the total of the rents so apportioned, including a notional apportionment in respect of the portion occupied by the tenant, shall not exceed 110% of the rent of the whole premises. These provisions, however, have no application to the relationship between a landlord and his tenants and clearly they are designed to deal with the case which was of all too frequent occurrence where a chief tenant who was himself protected as against his landlord sought to exploit that protection by subletting at excessive rents.

I would dismiss the appeal with costs.

Tan Ah Tah F.J. and Chua J. concurred.

Appeal dismissed.

Solicitors: *L. A. J. Smith; Lee & Lee.*

MARUTHAPPAN v. CLAUDE DA SILVA

[F.C. (Thomson L.P., Chua and Winslow JJ.) September 14, 1964]

[Singapore — Federal Court Civil Appeal No. 64 of 1963]

Principal and Agent — Collector of rents — Agent cannot dispute title of Principal.

Landlord and Tenant — Agent appointed to collect rents staying on demised premises rent free — Whether he is tenant or licensee.

The respondent was the mortgagee in possession of the unexpired portion of a 99 years lease of controlled premises. The appellant was the agents appointed by the respondent to collect rents from the various tenants of the premises The respondent commenced proceedings for the recovery of $1,000 being balance of rents collected by the appellant on behalf of the respondent. It was contended for the appellant that he was a tenant of the premises and that the respondent's leasehold interest in the premises had expired on December 31, 1959. The learned trial judge accepted the story of the respondent and gave judgment as claimed. On appeal,

Held: (1) on the facts the learned trial judge was right in holding that the appellant was not the tenant of the premises but the agent of the principal for the collection of rents;

(2) the appellant could not as agent dispute the title of his principal and must account for the rents collected by him, even though the respondent's leasehold interest in the premises had expired.

Cases referred to:—

(1) *Langford* v. *Selmes* (1857) 3 K. & J. 220 at p. 226.

(2) *Zulueta* v. *Vincent* (1862) 1 De G. M. & G. 315 at p. 321.

(3) *Blanstein* v. *Maltz, Mitchell & Co.* [1937] 2 K.B. 142.

(4) *De Mattos* v. *Benjamin* (1894) 63 L.J.K.B. 248.

(5) *Bridger* v. *Savage* (1884) 15 Q.B.D. 363.

(6) *Raja Bhawani Singh* v. *Maulvi Misbahuddin* (1929) 56 I.A. 170.

FEDERAL COURT.

K. S. Chung for the appellant.

L. A. J. Smith for the respondent.

Cur. Adv. Vult.

Thomson L.P.: This appellant at all material times was living in a portion of premises at 59 Wilkie Road, Singapore, and was collecting payments by way of rent from a number of other inhabitants of the premises. Until 1st January, 1960, the respondent (who is a solicitor) was the mortgagee in possession of the unexpired portion of a 99 years' lease of the premises, the present owners of which, the reversioners, it is said, are unknown.

It is not necessary to set out at any great length the history of the premises which is not in dispute here. On 2nd January, 1861, one Prinsep, the then owner of the land, granted a 99 years' lease in respect of it. On 7th February, 1931, the respondent obtained from the then leaseholder a second statutory mortgage in respect of the land as security for money lent and the same day he obtained the assignment of a previous first mortgage. Some time in 1938 the respondent foreclosed and went into possession occupying part of the premises himself and collecting rents from some twenty persons who were living in other parts of the premises as sub-tenants. The actual collection was done by the appellant who had been employed by the respondent as a clerk since 1930. For this he was paid a commission of 5%, and was also allowed to occupy one room without payment.

During the war the respondent had to leave Singapore. He was eventually interned in Java and did not return to Singapore until towards the end of 1945.

In the meantime a Mr. Oehlers, who had held the respondent's power of attorney since 1937, had started to rescue his affairs from the confusion into which they had fallen in consequence of the Japanese invasion. In the course of doing so he sent for the appellant who prepared a list of respondent's properties and the tenants of them with a view to resuming the collection of rents. This list included 59 Wilkie Road but did not shew any tenants of it. The appellant explained that the premises were occupied by a number of persons but there was no head tenant. Oehlers did not wish to be troubled with the collection of a number of small rents and to avoid this "appointed" (his own word) the appellant to be head tenant. The appellant's name was then inserted against 59 Wilkie Road in the list of tenants and Oehlers gave him a document dated 10th October, 1945, which read as follows:—

"TO ALL WHOM IT MAY CONCERN:

Re: No. 59 Wilkie Road.

Bearer, V. MARUTHAPPAN, is now the Chief Tenant of No. 59 Wilkie Road, Singapore. All sub-tenants must attorn tenant to him and produce to him their last rent receipts to enable him to consider confirming the tenancies.

Sgd.

G. E. N. Oehlers

Attorney of Mr. C. H. da Silva

MORTGAGEE OF THE ABOVE PREMISES."

The respondent returned to Singapore about November, 1945, and met the appellant, who told him of his arrangement with Oehlers. This was not agreeable to the respondent and, apparently without much protest from the appellant, they came to a new arrangement.

Under this the appellant was to continue to live on the premises and to pay the respondent a minimum sum of $80 a month together with half of any balance remaining from the rents paid by the other inhabitants after deducting municipal charges and gardeners' wages. Later the minimum amount payable by the appellant was increased to $100 a month. Ultimately, in June, 1956, it was agreed that the appellant should pay the respondent $200 a month and keep for himself all the rents paid by the other inhabitants but should continue to pay municipal charges and wages. The appellant paid this sum monthly until December, 1959. Throughout this period from 1945 to 1959 it is clear that for the purposes of dealing with the other inhabitants of 59 Wilkie Road the appellant consistently represented himself with the full knowledge of the respondent as the tenant of the whole premises.

On this it has always been the appellant's position that, at any rate from the time of his first arrangement with Mr. Oehlers, he was the tenant of the premises at a rent which was originally $80 a month and latterly was $200, which rents had been regularly paid by him until the end of 1959. He says, and the figures appear to be accepted, that from September, 1945, until the end of 1959 he paid in all a sum of $27,344 in respect of the premises whereas

the maximum recoverable rent for the same period under the Control of Rent Ordinance would, on the assumption of a standard rent of $80 a month, have been $13,760.

For the next few years the appellant continued to be employed as a sort of a part-time clerk and a rent collector by the respondent who spent a considerable part of his time in England.

In the event, however, they fell into disputes. The evidence of both parties as to the course of these disputes can only be described as lacking in detail and coherence, though it would appear that eventually the appellant ceased to be employed by the respondent as a clerk and ceased to collect rents for the respondent's properties other than 59 Wilkie Road. There is, however, not a scrap of evidence from either side of any new arrangement, that is any arrangement later than that of 1956, relating to 59 Wilkie Road and the appellant continued to pay the $200 a month in respect of that property until 31st December, 1959, after which he ceased to make any payments.

At this time the appellant apparently contemplated taking some sort of proceedings against the respondent but before he did so the respondent's then solicitors commenced the present proceedings against him on 19th July, 1960, when the respondent was in England and the solicitors who acted for him were, it is said, not very fully instructed. The action was commenced in the District Court, though it was later transferred to the High Court, and the claim was originally for $1,000 being five months arrears of rent in respect of 59 Wilkie Road.

Some time later the respondent returned to Singapore and changed his solicitors and the claim was amended. In its amended form it read as follows:—

> "The plaintiff's claim is $1,000 for payments due at the rate of $200 per month from the defendant to the plaintiff out of rents collected by the defendant from tenants of various parts of the premises known as No. 59 Wilkie Road, Singapore, for the months of January to May 1960 of which the plaintiff was the mortgagee in possession and the defendant the rent collector employed by the plaintiff."

The defence was that the appellant had become principal tenant of the whole of 59 Wilkie Road in 1945, that he had paid rent to the respondent at various rates up to 31st December, 1959, that on that date the lease of which the respondent was mortgagee expired and thereafter the respondent had no right, title or interest whatever in the premises and was not entitled to recover anything in respect of them. On the other hand between 1945 and 1959 the amounts paid by the appellant by way of rent were greatly in excess of the maximum amounts payable by him by reason of the Control of Rent Ordinance and there was a counterclaim for this excess.

The matter came on for trial before Tan Ah Tah J. who is the event found for the respondent on the claim and on the counterclaim. He took the view that the appellant was never at any time a tenant of any part of 59 Wilkie Road, that as regards the portion of the premises on which he resided he was a licensee and not a tenant, that he had been collecting rents on behalf of the respondent as his rent collector and that he had no right to retain any of the money so collected for himself except for his stipulated remuneration. He accordingly gave judgment for the respondent for $1,000 as claimed.

Against that decision the appellant has now appealed.

With regard to the relationship between the parties prior to the end of 1959 the evidence has been examined in very great detail by the learned trial judge and it is not necessary to go over the ground again at length. The judge accepted the respondent as a "truthful and candid witness" and except on one point of minor importance preferred his evidence to that of the appellant. On that view of the evidence it is clear that the respondent had not at any time any intention of creating a tenancy in favour of the appellant and that throughout he regarded the appellant as nothing but a rent collector and the appellant accepted that position.

That, however, is not the end of the matter and if the transactions between Oehlers and the appellant in 1945 be considered in isolation it might well be held that a tenancy was created then.

If, however, a tenancy was then created it is difficult to resist the conclusion that that tenancy was voluntarily given up within a matter of weeks and the appellant then became a rent collector who was residing on the premises for the purposes of his employment as a licensee. This result would seem to follow from the whole subsequent course of dealings between the parties. In 1945 the appellant had been a lawyer's clerk for over 15 years and was familiar with what might be called the mechanism of property management. In particular he must have been familiar with the legislation relating to rent control which had been in force in Singapore since 1939. If he had obtained a tenancy of the whole premises at $80 a month from Oehlers as the respondent's attorney he knew that he could not be deprived of that tenancy nor could the very moderate rent be increased. Why, then, should he agree to three subsequent modifications of his arrangements with the respondent each of them, considered in isolation, progressively to his disadvantage? It really is unbelievable

that a man of his experience should have submitted without protest to what, if he were a tenant, was a series of what he knew to be unjustified and unlawful demands for increases in rent. The corollary would seem to be that he regarded himself not as a tenant, in which capacity his position was impregnable, but as a rent collector whose position was terminable by notice.

That conclusion coupled with the fact, as found by the trial judge, that the respondent had not at any time any intention of creating a tenancy leads to the result that there was no tenancy and that the position of the appellant was that of a rent collector, that is of an agent for the collection of rents on behalf of his principal.

It is in the light of that relationship between the parties as principal and agent that the argument that the respondent had no title to recover anything from the appellant in respect of 59 Wilkie Road must be considered.

That argument is based on the admitted facts that prior to 1st January, 1960, the respondent was in occupation of 59 Wilkie Road as the mortgagee of a leasehold interest and that the term of that interest expired on 31st December, 1959. Thereafter if the respondent remained in possession he did so without the knowledge of the reversioner and if he had any interest at all in the premises it was as a sort of tenant at sufferance by analogy with the position of a lessee who remains in possession after the expiration of his term without the knowledge of the reversioner.

The question of the respondent's interest, if any, in the premises is of some academic curiosity and little guidance as to its solution is to be found in the books. It is not, however, the question that falls to be answered in the present case. The question here is something arising out of the relationship between principal and agent and not between landlord and tenant. That that relationship was connected with the tenure of land is purely accidental, so to speak.

Now, it is well-settled law that in proceedings for recovery of rent or for ejectment a defendant who has been a tenant is entitled to shew that the plaintiff's title has expired (see e.g. *Langford* v. *Selmes* [1]).

In the case of landlord and tenant, however, the relationship is one of tenure of land, though of course there is also a contractual element in it, while in the case of principal and agent the relationship is primarily contractual and also involves a fiduciary element.

In the old case of *Zulueta* v. *Vincent* [2] Lord Truro L.C. observed that it was "a well-settled rule of law that an agent should not be allowed to dispute the title of his principal" and 85 years later in the case of *Blaustein* v. *Maltz, Mitchell & Co.*[3] it was held that in an action by a principal against an agent for money held by him on behalf of the principal the agent cannot set up by way of defence the *jus tertii* of the true owner of the money. Again in the case of *De Mattos* v. *Benjamin* [4] it was held that a principal could recover the amount of bets won on his behalf by an agent notwithstanding that the contracts between the agent and the parties with whom he made the bets and from whom he received the money were illegal. Lord Coleridge C.J. said:—

> "It is the ordinary duty of a man who receives money from another to pay it over to the principal on whose behalf it was received."

The same thing had been decided in the earlier case of *Bridger* v. *Savage* [5] where Bowen L.J. said (at p. 367):—

> "When the bet is paid the transaction is complete, and when it is paid to an agent it cannot be contended that it is not a good payment for his principal. If not, how monstrous it would be that the agent who has received money which belongs to his principal, and which he received for his principal, and only on that account, should be allowed to say that the payment was bad and void."

Finally I would refer to the case of *Raja Bhawani Singh* v. *Maulvi Misbah-ud-din.*[6] In that case the ruler of a minor State within the State of Gwalior had entrusted certain moneys to an agent. It was alleged that these were public moneys and that the ruler had in any event been subsequently deposed and in a suit by the ruler in his private capacity the agent said that on those grounds the plaintiff had no right to sue. This view was upheld by the High Court of Lahore.

The Privy Council, however, decided otherwise. Lord Atkin (at p. 172) dealt with the question as follows:—

> "Even assuming the correctness of the premises their Lordships consider the conclusions incorrect. The principle is well established that an agent entrusted with money or goods by a principal to be applied on his principal's account cannot dispute the principal's title unless he proves a better title in a third person and that he is defending on behalf of and with the authority of the third person. The same principle controls the relation of bailor and bailee, which may come into existence without the added relation of principal and agent. The agent is certainly in no better position than the bare bailee. It may also be remarked that as between principal and agent there is a contractual position fortified by fiduciary relations, and that one of the contractual terms is that the agent should render an account to the principal of his dealings with the property entrusted to him in the course of the mandate. It is difficult to see how this obligation can in any way disappear except by transfer of the contractual right by novation or operation of law: and it may well subsist, notwithstanding that the property proves to belong to some one other than the principal.
>
> . . . . . .

the defendant does not suggest that he is defending for or with the authority of the State of Gwalior. He must therefore account to his principal, and leave him to settle his affairs with Gwalior if there is anything to settle."

In the present case it is abundantly clear that the rents collected by the appellant from the inhabitants of 59 Wilkie Road came into his possession in his capacity as agent for the respondent and that no claim has been made upon him by the reversioners of the property, whose very identities seems to be unknown. In the circumstances he is bound to pay the amount collected less his remuneration, which in respect of each month is the difference between the total sum collected and $200, to the respondent.

For these reasons I would dismiss the appeal with costs.

Chua and **Winslow JJ.** concurred.

Appeal dismissed.

Solicitors: *Hilborne, Chung & Co.; L. A. J. Smith.*

LEE SOCK GOH v. STRAITS CABARET (1953) LTD.

[F.C. (Thomson L.P., Barakbah C.J. (Malaya) and Wee Chong Jin C.J. (Singapore)) September 15, 1964]

[Singapore — Federal Court Civil Appeal No. 42 of 1964]

Landlord and tenant — Consent judgment for possession — Order for possession suspended for reasonable time before execution — Estoppel per rem judicatam.

Practice and Procedure — High Court — Power and jurisdiction of.

In this case the respondents had obtained a consent judgment in 1957 for possession of premises at Anson Road, Singapore, but the judgment provided that the order for possession shall not be enforced unless the rent for the premises was not paid. Subsequently as more than six years had elapsed from the date of the judgment, the respondents applied by summons in chambers for leave to proceed with the execution. The order for execution was issued ([1964] M.L.J. 299) and it was against this order that the appellant appealed. The principal ground of appeal was that the High Court had no power and no jurisdiction to give a judgment of the sort it did in 1957.

Held: the then Supreme Court in Singapore (of which the High Court was a part) had power to suspned an order for possession for a reasonable time before execution and therefore the order it made in 1957 was within its power and jurisdiction.

Cases referred to:—

(1) *Kok Hoong* v. *Leong Cheong Kwang Mines Ltd.* [1964] M.L.J. 49.

(2) *Jones* v. *Savery* [1951] 1 All E.R. 820.

FEDERAL COURT.

L. A. J. Smith for appellant.

Goh Heng Leong for respondents.

Thomson L.P. (delivering oral judgment): This is an appeal against a judgment of Mr. Justice Choor Singh relating to the possession of certain premises in Anson Road, Singapore.

The matter arose thus. In 1957 the landlords of the premises, who are the respondents to the present appeal, commenced proceedings for possession of the premises against the lessee who is the present appellant. Those proceedings were contested but with regard to the matters in contest it is only necessary here to observe that one of the grounds of defence pleaded was that the premises were rent-controlled. It is needless to follow the whole course of that action but in the event it terminated in a judgment for the then plaintiffs dated 17th July, 1957, which was made by consent. And I pause here to observe that the effect of that judgment was to create an estoppel *per rem judicatam* as between the parties on everything which was in issue on the pleadings. It is unnecessary to look for authority for that proposition beyond the judgment of the Privy Council in the case of *Kok Hoong* v. *Leong Cheong Kwang Mines Ltd.*.[1]

The terms of that judgment were unusual in the sense that I very much doubt if any of us here has previously seen a judgment in similar terms. The relevant portions read as follows:—

"....the plaintiffs do recover against the defendant possession of....the....premises....at....Anson Road, ...*AND IT IS ORDERED* that the defendant do give the plaintiffs possession of the....premises forthwith but provided that during the residue of the term of years created by the lease of the said premises made between the parties hereto and dated the 2nd day of March, 1954 such judgment and order for possession shall not be enforceable unless the rent for the said premises.... has not been paid by the....(due date)....in accordance with clause 6(c) of the said lease before the 14th day of that month, in which event the plaintiffs are to be at liberty to apply to the judge for leave to issue execution on this judgment...."

That is dated 17th July, 1957, and thereafter it would appear that the parties lived in a state as nearly approaching amity as was possible until on 9th April, 1964, the lease having expired the landlords were minded to execute the judgment of 17th July, 1957. That judgment was then over six years old and accordingly it was necessary, by reason of the rules of the High Court in Singapore, to apply to a judge by way of summons in chambers for leave to proceed with the execution. That course was taken. Such an application was made and an order for execution issued as prayed. It is against that order that the appellant (the tenant) has now appealed.

To my mind the appeal is without substance. Mr. Smith, for the appellant, with his usual candour, has made it clear that the sum and substance of his case is that the High Court had no power and no jurisdiction (I am not quite clear whether power or jurisdiction was in point but I have put it in the way most favourable to